REMARKS

I. Claims in the Case

Claims 1-7, 12, 14-18, 22 and 25-29 have been canceled. Claims 8-11, 23 and 24 have been amended. Claim 30 has been added. Claims 8-11, 13, 19-21, 23, 24 and 30 are pending.

II. Claim Objections

The claims have been amended and are now directed to transgenic fish comprising a fish promoter that directs expression predominantly in muscle, selected from a fish muscle creatine kinase gene promoter, or a fish fast skeletal muscle isoform of myosin light chain 2 gene promoter. Thus, Applicants submit the current claim 8 is a generic claim that is directed to two possible species, one of which (the mlc2 promoter) is currently under examination. This is a totally appropriate linking claim. All of the remaining claims now depend to one extent or another from claim 8.

With respect to 37 C.F.R. 1.141, the rule specifically states that applicants are entitled to claim generic claim that are generic to several patentably distinct species. Claim 8, for example, is such a claim, and the remaining claims are all dependent claims, as required by 37 C.F.R. 1.141.

III. Written Description Rejections

The rejection of claim 16 is now moot in light of the cancellation of this claim.

With respect the remaining concerns, the claims are now all directed to transgenic fish having either the fish muscle creatine kinase gene promoter or the fish MLC2 promoter, two well-defined classes of promoters exemplified by the present disclosure. This should address the Examiner's written description concerns.

IV. Rejections Under 35 U.S.C. 112, Second Paragraph

Regarding "ornamental fish" found in claims 19-21, Applicants reiterate their previous arguments and provide the following additional information.

In the Action the Examiner further queries how certain fish, such as catfish, tilapia or eel, could be considered ornamental fish. However, ornamental varieties of such fish are well known. As documented at www.fishbase.org, an online fish resource, there are various members of the catfish, tilapia, and eel family that are marketed as ornamental fish. A web-site print-off of one example from each of these families are enclosed, although we can cite more if necessary.

Further with regard to the term "ornamental fish" being a recognized and well understood term in the industry, we point out that in addition to being defined by the FDA, the USDA has assigned "ornamental fish" its own tariff code (HTS 0301100000) for import/export purposes.

Moreover, the term "ornamental fish" has routinely been used in numerous US patents, including US 6,518,252 (see claim 4), US 6,783,778 (see claim 9) and D404,683, to name a few.

Lastly, it is noted that the PTO manual of classification actually has a classification for ornamental plants, class 800, subclass 323.

Applicants thus respectfully request that the Examiner reconsider and withdraw the rejection as to "ornamental fish."

V. Rejection of Claims as Anticipated

Lastly, the Action rejects many of the claims of the claims as being anticipated by Moss *et al.*

In response, Applicants point to at least two distinguishing features. One, Moss *et al.* employs a rat promoter not a fish promoter. Two, as indicated by the Examiner, Moss *et al.* concerns, at best, mosaic transgenic fish whereas the present claims are directed to fish that are

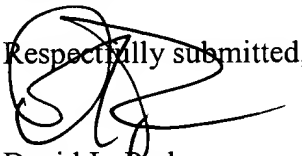
"capable of breeding with either a said transgenic fish or a non-transgenic fish to produce viable and fertile transgenic progeny." It is believed that mosaics do not have this ability.

CONCLUSION

Applicants believe that the foregoing remarks fully respond to all outstanding matters for this application. Applicants respectfully request that the rejections of all claims be withdrawn so they may pass to issuance.

Should the Examiner desire to sustain any of the rejections discussed in relation to this Response, the courtesy of a telephonic conference between the Examiner, the Examiner's supervisor, and the undersigned attorney at 512-536-3055 is respectfully requested.

Respectfully submitted,



David L. Parker
Reg. No. 32,165
Attorney for Applicants

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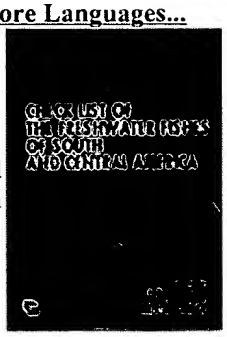
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 474-5201
(512) 536-4598 (facsimile)

Date: September 19, 2005

*Stockholm, Sweden

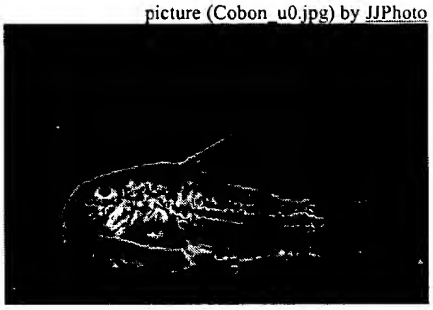
Corydoras bondi
Blackstripe corydoras

Book produced in collaboration with FishBase.



Corydoras bondi Gosline, 1940

picture (Cobon_u0.jpg) by JJPhoto



Map

Family: Callichthyidae (Callichthyid armored catfishes)

Order: Siluriformes (catfish)

Class: Actinopterygii (ray-finned fishes)

FishBase name: Blackstripe corydoras

Max. size: 4.7 cm SL (male/unsexed; Ref. 37395)

Environment: demersal; freshwater; pH range: 6 - 8; dH range: 2 - 25

Climate: tropical; 22 - 26°C

Importance: fisheries: of no interest; aquarium: commercial

Resilience: High, minimum population doubling time less than 15 months(Preliminary K or Fecundity.)

Distribution: South America: Yuruari River in Venezuela, Corantijn and Rupununi River basins.
Gazetteer

Biology:

Red List Status: Not in IUCN Red List (Ref. 53964)

Dangerous: harmless

Coordinator: *Reis, Roberto E.*

Main Ref: Burgess, W.E.. 1992. (Ref. 26041)

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More information:

Countries	Common names	References	Collaborators
FAO areas	Synonyms	Growth	Genetics
Occurrences	Pictures	L-W relationship	Allele frequencies
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Ration	Larvae	Morphometrics	Processing
Predators	Larval dynamics	Gill area	Speed
Ciguatera	Biblio	Brains	Swim. type

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Internet sources: BiOSC Point Data | CISTI | Google Scholar | Google | GOBASE | PubMed | Scirus | Tree of Life | Neodat | Zoological Record

Check for FishWatcher | Check for other web sites | Check for Fish Forum |

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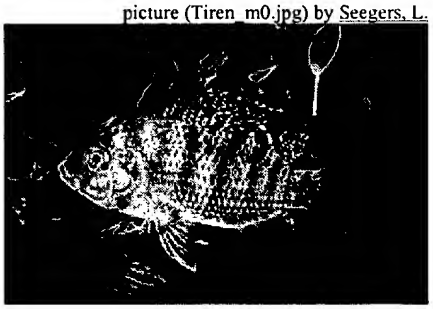
Tilapia rendalli
Redbreast tilapia

Tilapia rendalli (Boulenger, 1897)

picture (Tiren_m0.jpg) by Seegers, L.



Map

Family: Cichlidae (Cichlids), subfamily: Pseudocrenilabrinae
Order: Perciformes (perch-likes)
Class: Actinopterygii (ray-finned fishes)
FishBase name: Redbreast tilapia
Max. size: 45.0 cm TL (male/unsexed; Ref. 26550); max. published weight: 2,500 g (Ref. 26550); max. reported age: 7 years
Environment: benthopelagic; freshwater; brackish; depth range - 3 m

Climate: tropical; 24 - 28°C; 20°N - 20°S
Importance: fisheries: commercial; aquaculture: commercial; gamefish: yes; aquarium: commercial
Resilience: Medium, minimum population doubling time 1.4 - 4.4 years(K=0.13-0.18; tmax=7)
Distribution: Gazetteer Africa: Senegal and Niger River, Congo River system, Zambezi River system, Lake Tanganyika and Malagarazi. Also known from Shaba, upper Kasaï, Lualaba system, Lake Malawi, Natal, Okavango and Cunene (Ref. 5163). Introduced elsewhere usually for weed control and aquaculture. Several countries report adverse ecological impact after introduction.
Morphology: Dorsal spines (total): 15-17; Dorsal soft rays (total): 10-13; Anal spines: 3; Anal soft rays: 9-10; Vertebrae: 29. Head and body mid to dark olive-green dorsally, paling over the flanks. Body usually with vertical bars only and scales with a dark basal crescent. Dorsal fin olive-green with a thin red margin and white to grey dark oblique spots on the soft rays; caudal fin spotted on dorsal half and red or yellow on ventral half (Ref. 4967, 34290).
Biology: Prefers quiet, well-vegetated water along river littorals or backwaters, floodplains and swamps. Tolerant of a wide range of temperature (8-41°C) (Ref. 3) and salinity to 19 ppt (Ref. 7248). Forms schools; is mainly diurnal. Juveniles feed on plankton. Adults feed mainly on higher plants and also algae, insects and crustaceans. Makes excellent eating (Ref. 5214).
Red List Status: Not in IUCN Red List (Ref. 53964)
Dangerous: potential pest
Coordinator: *Kullander, Sven O.*
Main Ref: Teugels, G.G. and D.F.E. Thys van den Audenaerde. 1991. (Ref. 5163)

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More information:

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Introductions	Sounds	L-L relationship	Heritability
Ecosystems	Reproduction	Length frequencies	Strains
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Internet sources: Alien/Invasive Species database | BiOSC Point Data | ECOTOX | CISTI | FAO aquaculture | Google Scholar | Google | GOBASE | GenBank | PubMed | Recipes | Scirus | Tree of Life | Zoological Record

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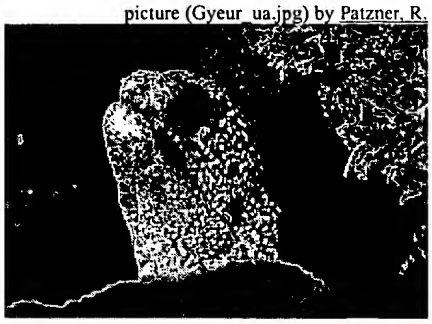
Gymnothorax eurostus
Abbott's moray eel

Gymnothorax eurostus (Abbott, 1861)


picture (Gyeur_ua.jpg) by Patzner, R.

Map

Family: Muraenidae (Moray eels), subfamily: Muraeninae

Order: Anguilliformes (eels and morays)

Class: Actinopterygii (ray-finned fishes)

FishBase name: Abbott's moray eel

Max. size: 60.0 cm TL (male/unsexed; Ref. 559)

Environment: reef-associated; marine; depth range - 0 m

Climate: subtropical

Importance: aquarium: commercial

Resilience:

Distribution: Indo-Pacific: anti-tropical in distribution. Reported from Seychelles (Ref. 1623) but Randall and van Egmond 1994 (Ref. 10685) believe otherwise. Eastern Pacific: Costa Rica and Easter Island (Ref. 9710) and Chile (Ref. 9068).
Gazetteer

Morphology: Vertebrae: 120 – 123. Dark purplish brown with small yellow spots which is sparse on the tail.

Biology: Inshore reef species, though not often seen.

Red List Status: Not in IUCN Red List (Ref. 53964)

Dangerous: harmless

Coordinator:

Main Ref: Chen, H.-M., K.-T. Shao and C.T. Chen. 1994. (Ref. 6934)

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